

OGC 81-03622

1 May 1981

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

FROM: [REDACTED]
Director, Intelligence Community Staff[REDACTED]
Acting General Counsel

SUBJECT: Proposed Revision of Executive Order 12036

- REFERENCES:
- A. Memorandum from Richard V. Allen, dated April 24, 1981, Subject: Revision of E.O. 12036.
 - B. Memorandum from James W. Nance, dated April 1, 1981, Subject: Revisions to Executive Order 12036.

1. Attached for your review and approval is a proposed revision of Executive Order (EO) 12036 (Tab A), which has been developed based upon the two NFIC meetings held on this subject and numerous staff-level meetings and discussions. Section 2 of the proposed new Order has been written from a positive standpoint to stress that the intelligence activities mentioned therein are authorized, lawful and proper when conducted in accordance with the Order. Thus, it departs significantly from the negative and condemnatory tone of EO 12036.

2. The proposed Order takes into account the advice provided by the Intelligence Community through the NFIC. While not all positions taken by the Community have been accommodated, we feel that the proposed new Order strikes a balance between the competing views that have been expressed.

3. We wish to call to your attention the following specific provisions and issues:

- a. The language contained in section 1-706 concerning the reporting of crimes by nonemployees represents a

compromise developed by the Central Intelligence Agency (CIA) and the Department of Justice (DoJ). Its acceptability depends upon the procedures that would be developed to govern the manner in which such crimes are reported and how classified information and intelligence interests would be handled by DoJ. CIA has tentatively agreed to a draft set of procedures that would adequately accommodate intelligence interests. However, DoJ has not yet given its tentative approval to these procedures and may wish to make certain changes that would be unacceptable to CIA. Should that prove to be the case, we recommend that the proposed compromise language for section 1-706 be rejected and that the requirement to report nonemployee crimes be eliminated from the Order.

b. Section 2-307 of EO 12036 prohibits any agency of the Intelligence Community from requesting or encouraging, either directly or indirectly, any person or organization to undertake activities forbidden by the Order. This section has been retained, but has been reworded to narrow its scope so as to prohibit an agency from carrying out "indirectly or by proxy" any forbidden activity. This revision eliminates the vague requirement that intelligence agencies not "encourage" activities forbidden by the Order.

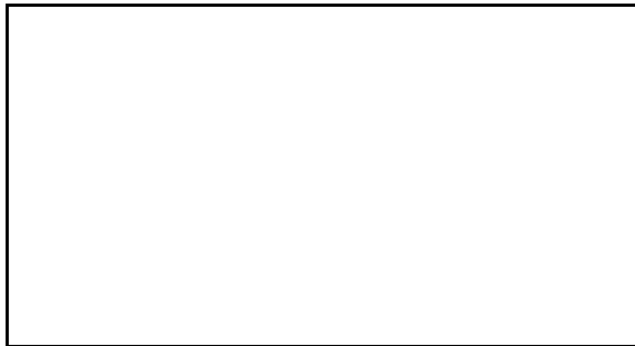
c. Section 2-201(a) reflects compromise language proposed by DoJ which basically retains the standard in the current Executive Order for approval of agency procedures by the Attorney General. However, the compromise provides for appeal to the National Security Council on any procedure to which the Attorney General and agency head cannot agree. This appeals provision, coupled with the requirement that the Attorney General provide a statement of reasons for not approving any procedure, should be sufficient to prevent the staff-level frustration of procedures proposed by the Intelligence Community.

d. The proposed new Order retains a modified section on the National Security Council (NSC) and provides that the NSC shall be the highest level approval authority for foreign intelligence, counterintelligence and special activities. This section also authorizes the NSC to establish such committees as may be necessary. This partially fills the void in the Order created by the deletion of sections 1-2 and 1-3 as a result of your proposed National Security Decision Directive No. 2.

e. The new section 1-2 of the Order authorizes the Director of Central Intelligence to establish such advisory boards, councils or groups as may be required for advice on matters of Community concern. Membership on such groups will include representatives of collection, processing and analytical components when substantive intelligence matters are considered, and, in addition, representatives of the Secretary of Commerce, Attorney General, Assistant to the President for National Security Affairs, and Office of the Secretary of Defense when nonsubstantive matters are considered.

f. A brief drafting history (Tab B) has been developed to accompany the Order. It reflects the positive approach to intelligence activities represented by the Order and reflects minor interpretative points not considered of sufficient importance for incorporation in the Order.

4. We recommend that you approve the proposed new Executive Order on United States Intelligence Activities and, as requested by the references, transmit it to the National Security Council for review and approval by the President. A cover memorandum to Richard Allen for this purpose is attached at Tab C. In addition, in keeping with your commitment to the Senate Select Committee on Intelligence, transmittal letters to Chairmen Goldwater and Boland are attached at Tabs D and E, respectively.



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Attachments:
As stated.